UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
Karla Johnson, Erica Johnson,
Megan Johnson, and
Sara Ybarra-Johnson,

Charging Party,

v.

Robert and Virginia Quintana, dba
Minnequa Lake Mobile Home Park,
and Lynn Mercado,

Respondents.

HUDALJ 08-91-0230-1
HUDALJ 08-92-0239-1
(Decided: November 21, 1994)

Steve E. Alcala, Esquire
For the Respondents

Marc Rothberg, Esquire
For the Secretary and the Complainants

Before: Robert A. Andretta
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of complaints filed on July 5, 1991 and November 4,

1991, both of which were amended on December 8, 1993, by Karla Johnson on behalf of herself and her three minor children ("Complainants"). (S 2-5)[1] The complaints were filed with the U.S. Department of Housing and Urban Development ("HUD") and allege violations of the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq*., as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 120 Stat. 1626 (1988) ("Fair Housing Act" or "Act") by discrimination based on familial status and retaliation for exercising a right under the Act, respectively.[2] They are adjudicated in accordance with § 3612(b) of the Act and HUD's regulations that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On May 9, 1994, following an investigation of the allegations and a determination that reasonable cause existed to believe that discriminatory housing practices had taken place, HUD's Assistant General Counsel for the Rocky Mountains, in Denver, Colorado, issued a Determination Of Reasonable Cause And Charge Of Discrimination against Robert and Virginia Quintana, the owners of the subject property, the Minnequa Lake Mobile Home Park ("the park"), and Lynn Mercado, the Quintanas' daughter and the assistant manager of the park. ("Respondents"). The first complaint alleges that the respondents engaged in discriminatory practices on the basis of familial status in violation of § 804(b) of the Act, the applicable provisions of which are codified at 42 U.S.C.
§ 3604(b) and (c), and incorporated into HUD's regulations that are found at 24 CFR 100.50(b)(2) and (b)(4), 100.65, and 100.75 (1989).

The second complaint alleges that the respondents retaliated against Complainant Johnson, because of her having filed the first complaint, in violation of those sections of the Act that are codified at 42 U.S.C. § 3617 and incorporated into HUD's regulations that are found at 24 CFR 100.400. A hearing was conducted in Manitou Springs,

---

[1] The transcript of the hearing is cited with a capital T and a page number. The Secretary's exhibits are identified with a capital S and an exhibit number; those of the Respondent are identified with an R.

[2] The term "familial status" is defined in the Act, at 42 U.S.C. § 3602(k), as

> ... one or more individuals (who have not attained the age of 18 years) being domiciled with --
>
> (1) a parent or another person having legal custody of such individual or individuals; or
>
> (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

Colorado, on August 23-24, 1994, and the parties were ordered to submit post-hearing briefs by October 11, 1994. The parties timely submitted their briefs, and these cases therefore became ripe for decision on this last named date.

Findings of Fact

It is uncontested that by notice dated June 28, 1991, Respondent Robert Quintana informed Complainant and other park tenants that there would be a monthly rent surcharge of $5.00 for each child regardless of age beginning the first of July. (T 103; S 1). Complainant received the surcharge notice in person from Lynn Mercado, who stated that she was going to take over management of the park from her father. (T 34).[3]

On receipt of the notice, Complainant questioned the legality of the surcharge, and Respondent Mercado told her that if she didn't pay the child surcharge she would be charged a pet surcharge. (T 32-33). Complainant paid a surcharge of $15 per month, for three children, for four months. (T 36).

On July 5, 1991, Complainant filed a housing discrimination complaint with HUD, alleging that the surcharge constituted familial status discrimination. (T 36; S 2). She also distributed housing discrimination complaint forms to fifteen families in the park and explained the complaint process to them. (T 37). In the words of the secretary's post-hearing brief, she became a "ringleader."

The investigator assigned to the complaints by HUD notified the Respondents that the surcharge was illegal. (T 104). After discussion with the investigator, Respondents immediately stopped the surcharge and signed conciliation agreements with all of the complaining parties except Respondent Johnson, who refused to conciliate. (T 104). Respondent Quintana returned all the money that had been paid under the surcharge, and sent letters of apology to all the tenants involved. (T 105). Respondent Johnson received the refunded surcharge and the letter of apology in late October, 1991. (T 39, 41).

On the day Complainant received the refunded surcharge and letter of apology, she saw Mr. Quintana inspecting the trailer space adjoining Complainant's. Among other problems, there was a partial wooden fence between her lot and the one being inspected which had fallen over. She asked Mr. Quintana if he was going to fix the fence, and he responded that it was not his fence and putting it back up was her problem. (T 43). He then told her that she needed to put heat tape on her exposed water supply pipe to keep it

---

[3] Respondent Mercado did not testify at the hearing, but she previously admitted that she was an assistant manager at the park and that she delivered the surcharge notices. (S 12).

from freezing in the upcoming cold weather. (T 43). Complainant stated that she would want to talk with HUD first. She testified that Respondent Quintana answered that "he was tired of taking all this goddam shit from [her], and if [she] didn't like it ... that [she] could get the hell out of his trailer court." (T 44).

By hand-written letter dated November 5, 1991, Respondent Quintana told Complainant that she would have to heat tape her water pipes by November 12, or pay for having them done by a plumber, and provided a diagram and instructions for covering the pipe. (S 6). This letter included the admonition that, "Failure to comply with regulations are grounds to have you vacated." A sheet of park rules, including the requirement of heat taping the external water supply pipe, was also provided to Johnson. (S 7).

Also on November 5, 1991, Respondent sent a like letter to Complainant's next-door neighbor, Mary Jones. (T 117). Ms. Jones's husband put heat tape on their pipes within 24 hours at a cost of about $5. Mrs. Jones offered "to have her husband" heat tape Ms. Johnson's pipe, but Johnson declined "because it was not one of her top priorities." (T 50, 171-2, 181). Other park tenants were also notified to heat tape their water supply pipes. (*e.g.*, S 11).

On November 22, 1991, Johnson received a 30-day Notice to Quit dated November 20, 1991, which requested her to vacate the property in 30 days for failure to comply with regulations and interference with park management. (T 53; S 8). The Notice was prepared and sent in accordance with Colorado Revised Statutes 38-12-202. After receiving this letter, and being advised by HUD's investigator to heat tape the pipe, Johnson asked Mr. Jones to do the job, and he did so "before it snowed." (T 63). No state court action of eviction was ever conducted.

In January 1992, Johnson moved to a 3-bedroom apartment which was much larger than her trailer, and where she paid less rent. Meanwhile, she rented her trailer for the next year or so, after which she sold it. (T 75-81). While the trailer was rented, Johnson continued to pay the trailer space rent to the respondents.

Throughout the time during which the above incidents took place, Respondent Robert Quintana was being treated by a psychiatrist and a psychologist for "major depression and stress related disability" which had been caused by a particularly stressful series of events in his personal life. (R 2, 3). His psychologist stated the following:

> Part of the symptoms which we did address were periodic rages which he would explode -- making impulse statements which under other circumstances Mr. Quintana would never have

> evidenced. As his treatment progressed his rages subsided and he again was much more reasonable. I believe that had he not been under the stress and duress ... these rages would have never errupted [sic]. Mr. Quintana is a reasonable stable gentleman who went through [a] terrible ordeal. (R 3).

The psychiatrist to whom he was referred for evaluation stated that Quintana was hospitalized from June 7 to June 13, 1991 for extreme depression and suicidal ideation. During the hospitalization, he was medicated with Prozac and was still taking this medication at the time of the hearing. After the hospitalization, Quintana's condition was somewhat improved, but he "continued to have depressed effect, tearfulness at times, and though less obsessive than in the past, can often obsess ... and becomes angry and tearful." He still complains of chronic anxiety. (R 2).

Applicable Law

Congress enacted the Fair Housing Act to "[e]nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir.), *cert. denied*, 422 U.S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, [even] simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio), *aff'd in relevant part*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982).

On September 13, 1988 Congress amended the Act to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status. 42 U.S.C. §§ 3601-19. In amending the Act, Congress recognized that "families with children are refused housing despite their ability to pay for it." H.R. Rep. No. 711, 100th Cong., 2nd Sess. (1988) ("House Report"). In addition, Congress cited a HUD survey that found 25% of all rental units exclude children and that 50% of all rental units have policies that restrict families with children in some way. *See* Marans, *Measuring Restrictive Rental Practices Affecting Families With Children: A National Survey*, Office of Policy, Planning and Research, HUD, (1980). The HUD survey also revealed that almost 20% of families with children were forced to live in less desirable housing because of restrictive policies. Congress recognized these problems and sought to remedy them by amending the Fair Housing Act to make families with children a protected class.

Accordingly, the amended Act and HUD regulations make it unlawful, *inter alia*:

> (1) to discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services

> or facilities in connection therewith, because of ... familial status .... 42 U.S.C. § 3604(b); 24 CFR 100.50(b)(2) and 100.65 (1990).
> (2) to make, print, or publish, or cause to be made, printed, or published, any notice [or] statement ... with respect to the ... rental of a dwelling that indicates any preference, limitation or discrimination because of ... familial status, ... or an intention to make any such ... limitation or discrimination. 42 U.S.C. § 3604(c); 24 CFR 100.50(b)(4) and 100.75 (a)-(c).
>
> (3) to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of ... any right granted or protected by this part. 42 U.S.C. § 3617; 24 CFR 100.400(b).

Discussion

HUD's Chief Administrative Law Judge, Alan W. Heifetz, articulated the burden of proof test to be applied in housing discrimination cases brought under the Fair Housing Act in *HUD v. Blackwell*, Fair Housing - Fair Lending (P-H) ¶ 25,001, 25,005 (HUDALJ No. 04-89-0520-1, Dec. 21, 1989) (hereinafter cited as *Blackwell*). This statement of law was upheld by the United States Court of Appeals in *Secretary, HUD On Behalf Of Heron v. Blackwell*, 908 F.2d 864 (11th Cir. Aug. 9, 1990)("Blackwell II"). It is that the well-established, three-part test, shifting the burden of proof from the plaintiff to the defendant, and back again, that is applied by the federal courts to employment discrimination cases which are brought under Title VII of the Civil Rights Act, as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), should also be applied to housing discrimination cases that are brought before this forum. *See, e.g., Politt v. Bramel*, 669 F. Supp. 172, 175 (S.D. Ohio 1989). *See also*, Schwemm, *supra*, 323, 405-10 & n. 137.

The shifting burdens of proof format from *McDonnell Douglas* is designed to assure that the "plaintiff [has] his day in court despite the unavailability of direct evidence." *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984), citing *Loeb v. Truxton, Inc.*, 600 F.2d 1003, 1014 (1st Cir. 1979) (disapproved on other grounds in *Trans World Airlines, Inc., supra*). Therefore, in *HUD v. Murphy*, Fair Housing-Fair Lending (P-H), ¶ 25,002 (July 13, 1990), it was further established that where Complainant and the Government can produce direct evidence of discrimination, the shifting burdens of proof analysis set forth in *McDonnell Douglas* need not be applied. *Citing Trans World Airlines, supra*, at 121; *see also Teamsters v. U.S.*, 431 U.S. 324, 358, n. 44 (1977).

In this case, the statements made by Respondents Quintana and Mercado to

Complainant demonstrate directly that they intended to discriminate against families with children with regard to the terms and conditions of their renting a trailer space in the park. It is uncontested that by written notice dated June 28, 1991, Respondent Robert Quintana informed Complainant and other park tenants of a rental increase of "$5.00 per child" per month.

Complainant testified that the notice was delivered by Respondent Lynn Mercado, who stated that she was taking over management of the park. Complainant further testified that when she questioned the legality of the surcharge, Mercado threatened her with a pet surcharge. Mercado did not testify, and therefore Complainant's testimony is unrefuted.

It is the secretary's position that Respondent Quintana retaliated against complainant for filing her first complaint, and for helping and urging other tenants to do so, when in the following autumn he threatened to evict her. Since there is no direct evidence of this alleged offense, but rather, it must be construed from the facts, this charge must be subjected to the shifting burden of proof analysis mentioned above. *See, e.g., Politt v. Bramel,* 669 F. Supp. 172, 175 (S.D. Ohio 1989). *See also*, R. Schwemm, *Housing Discrimination Law*, at 323, 405-10 & n. 137 (1983). That burden of proof test is as follows:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence ... Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, undiscriminatory [sic] reason" for its action .... Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact pretext ....

Politt, supra, at 175, *citing McDonnell Douglas, supra*, at 802.

Complainant's protestation of the surcharge did not end with her exchange of words with Lynn Mercado. On July 5, 1991, she filed the first of the two complaints that are the subject of these proceedings, alleging that the surcharge constituted familial status discrimination. Further, Complainant distributed housing discrimination complaint forms to other families in the park and explained the complaint process to them.

The secretary notes in his post-hearing brief that, on the same day that complainant received the refund of the surcharge and letter of apology from Quintana, he orally threatened her with eviction. The subsequent notice of eviction again threatened

Complainant. In sum, the secretary claims that within three months after Complainant engaged in activity protected by the Act (*i.e.*, filing a complaint and helping others to do so), Respondent began to threaten her with eviction. The secretary further claims that this activity forced Complainant to leave the trailer park.

Respondent Quintana states that the threats of eviction were based on the non-discriminatory reason that Complainant refused to heat tape her water supply pipe. It is uncontested that she did not heat tape the pipes by either of the deadlines given to her. Instead, she waited until after she had checked with HUD, and was told by the HUD investigator that she should comply. Nonetheless, it is the secretary's contention that this reason for threatening eviction is pretextual.

The secretary argues three bases for concluding that the respondents' non-discriminatory reason for their actions is pretextual. First, the secretary argues that the respondents revealed animus toward the complainant by the way they talked to her and also by the fact that they asked the HUD investigator when they could legally evict her. (T 94-6). Also, Respondent Virginia Quintana stated that she was going to look for reasons to evict Complainant and that "had [Complainant] kept her mouth shut ... about the surcharge, ... everything would be fine and HUD would never have known." (T 47).

The second reason given by the secretary for urging this forum to conclude that the respondents' reason is pretextual is that park rules did not originally require heat taping the pipes, and neither Complainant nor Ms. Jones were ever before required to tape their pipes. Also, Quintana amended the rules to include heat-taping the pipes during the autumn in question.

The secretary's third reason for finding pretext is that Respondents Quintana violated their own rule that states, if a tenant fails to heat tape the supply pipe, "a plumber will be called out and charged to you." (S 7). Respondent admitted that he violated this rule by never calling a plumber to heat tape Complainant's pipe.

Asking an HUD investigator about what is or is not acceptable behavior under the Act cannot be construed as retaliatory. In this case, the Respondents did not threaten to evict the complainant throughout the time between her filing of the Complaint and the first heat tape argument. They also did not continue to threaten eviction once the heat tape was applied to Complainant's pipe. Thus, the nexus established is between the heat tape issue and the threat of eviction; not between the filing of the Complaint and the threat. Finally, the fact that Respondent did not comply with his own rules does not establish that his threat to evict Complainant was for reasons other than her refusal to heat tape her pipe.

Ultimate Conclusions

By sending a notice to his tenants with children that required them to pay a surcharge of rent per month per child, Respondents have violated the provisions of the Fair Housing Act that are codified at 42 U.S.C. § 3604(b) and (c), and, it follows, the HUD regulations that are found at 24 CFR 100.50 (b)(2) and (4), 100.65, and 100.75 (a)-(c). Since the secretary has failed to show that Respondents' reasons for threatening Complainant with eviction were a pretextual cover for retaliation for her having filed the first Complaint, case HUDALJ 08-92-0239-1 is **DISMISSED**.

Remedies

Section 812(g)(3) of the Act provides that where an administrative law judge finds that a respondent has engaged in discriminatory practices, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or equitable relief." 42 U.S.C. § 3613(g)(3). That section further states that the "order may, to vindicate the public interest, asses a civil penalty against the respondent." The maximum amount of a civil money penalty is dependent upon whether the respondent has been adjudged to have committed prior discriminatory practices. Where the respondent has not been adjudged to have committed any prior discriminatory practices, any civil money penalty assessed against the respondent cannot exceed $10,000. *See also* 24 CFR 104.910(b)(3) (1990). Otherwise, the maximum allowable civil money penalty is $25,000.

The government, on behalf of itself and the complainant, has prayed for: (1) an award of $750 to Complainant for emotional distress and a civil penalty of $3,000 to be assessed against the Quintanas for their issuance of the surcharge notice; (2) an award of $3,500 to Complainant for emotional distress to be assessed jointly and severally against the Quintanas and Respondent Mercado, and a civil penalty of $1,000 each, for implementing the surcharge; and (3) an award of $4,000 to Complainant for emotional distress, to be assessed jointly and severally against the Quintanas and Respondent Mercado, and a civil penalty of $4,000 to be assessed against Respondent Mercado, for the hostile environment and anger caused by Mercado's threat to charge Complainant a pet surcharge in lieu of a per-child surcharge.[4]

---

[4] The secretary also asked for damages to be paid to the complainant and civil penalties for the allegations of retaliation. However, these are no longer applicable because of the dismissal of that charge. The secretary did not ask for any injunctive relief or compensation for expenses.

Intangibles

The Secretary claims that the complainant suffered embarrassment, humiliation, and emotional distress as a result of Respondents' actions. In addition to actual damages, a Complainant is entitled to recover for these categories of damage. *See, e.g., Blackwell, supra,* at 25,001; *Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). Because these abstract injuries are not subject to being quantified, courts have ruled that precise proof of the actual dollar value of the injury is not required. *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.*, 478 F. 2d 380, 384 (10 Cir. 1973).

The administrative law judge assigned to decide a case of housing discrimination is accorded wide discretion in setting damages for emotional distress, and is guided in determining the size of the award by the egregiousness of the Respondent's behavior and the Complainant's reaction to the discriminatory conduct. R. Schwemm, *Housing Discrimination Law*, 260-62 (1983). Awards for emotional distress in relevant federal case law range far and wide, depending on the circumstances.[5] Therefore, a review of federal cases is not very helpful as guidance here.

However, awards of damages for emotional distress have been made by this forum in housing discrimination cases, and these can be looked to for some guidance. In *Blackwell*, $40,000 was awarded to a black couple for the embarrassment, humiliation, and emotional distress of having been denied a house because of their race. This was a clear case of open and blatant racial discrimination perpetrated by a real estate agent. In *Murphy, supra,* awards of $150, $400, $800, $1,000, and $5,000 were made for emotional distress and loss of civil rights, with the award of $150 being made to a party who "... suffered the threshold level of cognizable and compensable emotional distress." (at 25,057). In *HUD v. Guglielmi and Happy Acres Mobile Home Park*, Fair Housing - Fair Lending (P-H), ¶ 25,003 at 25,079, I awarded $2,500 to the Complainant where I

---

[5] *See, e.g., Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241 (8th Cir. 1983) ($12,402 award for plaintiff's mental anguish, humiliation, embarrassment and stress); *Grayson v. S. Rotundi & Sons Realty Co.*, 1 Fair Housing-Fair Lending (P-H) para. 15,516 (E.D.N.Y. Sep. 5, 1984) (compensatory damage awards of $40,000 and $25,000 for two plaintiffs' embarrassment and humiliation); *Parker v. Shonfeld, supra* ($10,000 compensation award for embarrassment, humiliation, and anguish); *Phillips v. Hunter Trails Community Ass'n.*, 685 F.2d 184 (7th Cir. 1982) (allowance of $10,000 to each plaintiff at a time when that court had never before exceeded $5,000). *Cf. Ramsey v. American Air Filter Co., Inc.*, 772 F.2d 1303 (7th Cir. 1985) (in employment discrimination case, jury award of $75,000 as compensatory damages for plaintiff's mental distress found excessive, and $35,000 awarded based upon the record).

found that the Respondents had "... contributed significantly to [Complainant's] actual and perceived loss of civil rights, feelings of embarrassment and humiliation, and general emotional distress" for the better part of a year, and in *HUD v. Baumgardner*, Fair Housing - Fair Lending (P-H), ¶ 25,006 at 25,101, I awarded $5,000 to a young man who had been discriminated against on the basis of sex "because men are messy tenants". He did not appear to be a man of vulnerable constitution, but he said that he was angry, hurt, and frustrated by the denial of the house he wanted and that it was a source of anger and distress for a few months. In *HUD v. Jeffre*, Fair Housing - Fair Lending (P-H), ¶ 25,020, *et seq*., I awarded $500 for inconvenience, $1,500 for emotional injury, and $2,500 for loss of housing opportunity to a complainant who had been denied an apartment for herself and a minor daughter on the basis of her familial status. Finally, in *HUD v. DiBari,* Fair Housing Fair lending ¶ 25,036 at 25,382, I awarded $200 for emotional distress to a woman of strong constitution who had been denied an apartment because of the Respondent's fear of harm to her child from lead-based paint.

In *HUD v. Pfaff*, HUDALJ 10-93-0084-8 (Oct. 27, 1994), I concluded that there should not be multiple penalties imposed upon a respondent for multiple violations of the Act that constitute one case.[6] Similarly, here, I do not find it appropriate to consider various amounts of damages to be paid by the individual respondents based upon each thing done or said. As a group, they have been found in violation of the Act by imposing an illegal rent surcharge per child, and they will, as a group, be required to pay for the damages that their action caused.

Respondent Robert Quintana did not decide to impose the surcharge for the purpose of preventing families with children from moving into the park, or even for the purpose of limiting the number of children in the park. Rather, since he pays for trash removal and water,[7] and had experienced recent instances of excess trash pick-ups due to misuse of the dumpster as well as waste of water, he decided that the trailer space rent should be tied to the number of people per space who create trash and use water. This was not all that unreasonable, although illegal under the Act, and it certainly was not a particularly egregious thing to do.

Having to pay the $15 in surcharge each month was a hardship for Complainant. It made her angry and upset. It is also clear that her relationships with the three respondents deteriorated, and that there were some nasty conversations regarding this

---

[6] How I reached this conclusion is restated in this initial decision in the subsection entitled "Civil Penalty."

[7] It is not known if Respondent also pays for other utilities.

issue. This further caused emotional distress to the complainant. On the other hand, as in the *Baumgardner* case mentioned above, the complainant here does not appear to be a person of particularly fragile constitution, and it is therefore not appropriate to view her as severely harmed emotionally by this instance. Moreover, after only a few months, this incident was closed with a written apology from Respondent Robert Quintana and a return of the surcharge money that had been collected from Complainant. Therefore, having compared the circumstances of this case to those in the cases mentioned above, including the awards made in those cases, an award of $1,000 for emotional distress will be included in the Order issued below.

Civil Penalty

The maximum penalty that may be imposed upon a respondent who has not been adjudged to have committed any prior discriminatory housing practices is $10,000. *See* 42 U.S.C. § 3612(g)(3); 24 CFR 104.910(b)(3). In the instant case, the secretary has asked for the imposition of civil penalties of $3,000 for Respondents Robert and Virginia Quintana's issuance of the notice of the surcharge, $1,000 for each respondent for implementation of the surcharge, and $4,000 for Respondent Lynn Mercado for threatening Complainant with a pet surcharge in lieu of a child surcharge when Complainant said it was illegal to charge the child surcharge.

Whereas some other federal statutes expressly require or permit the assessment of separate civil penalties for each violation of the act, the Fair Housing Act does not. *See, e.g.,* Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820; Clean Air Act, 42 U.S.C. § 7412(b). Thus, it can be seen that where Congress intended there to be multiple penalties for multiple violations of an act, it specifically so stated in the act. Therefore, even though nothing in the Fair Housing Act precludes the assessment of multiple penalties, I conclude that separate penalties for various respondents' activities should only be assessed when justice demands that their acts must be separated from their co-respondents'. *See also, HUD v. Pfaff, supra*.

Here, there is no compelling reason to treat separately the "implementation" of the surcharge from its "imposition" and the remark about a pet surcharge. There is also no apparent reason to separate out each role played by the three different respondents. Therefore, with respect to this first judgment of housing discrimination under the Fair Housing Act, the offenders will be assessed a single amount of civil penalty, not to exceed $10,000, for which they will be jointly and severally liable to the government.

In addressing the factors to be considered when assessing a request for imposition of a civil penalty, the House Report on the Fair Housing Amendments Act of 1988 states:

> The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not automatic in every case. When determining the amount of a penalty against respondent, the ALJ should consider the nature and circumstances of the violation, the degree of culpability, and any history of prior violations, the financial circumstances of that respondent and the goal of deterrence, and other matters as justice may require.

The analysis here is similar to that used to determine the damages. Although it is illegal under the Act to discriminate against tenants with children by treating them differently from other tenants, in this case, by charging more rent, Respondents' reaction to the increases in his utility bills was not all that unreasonable. Moreover, when he learned that the surcharge was in fact illegal, he apologized in writing to the effected tenants and returned to them the ill-gotten rent surcharge. Respondents are apparently not wealthy, and there is no record of their having been adjudicated liable for any previous violations of the Act.

Nonetheless, people must be held responsible for their actions, even if unwitting, so that they and others will take seriously the laws that effect them. Moreover, it is time enough now since the effective date of the Act for people who are in the business of being landlords to be fairly expected to be aware of its applications to them. Thus, although there is not an apparent reason for the government to have a keen interest in a high penalty, it would not serve the interests of justice to fail to impose any at all. Accordingly, and after having reviewed other penalties and the reasons given for them, I conclude that a civil penalty of $500 is appropriate, and it will be so ordered below.

Order

Having concluded that Respondents Robert Quintana, Virginia Quintana and Lynn Mercado violated the Fair Housing Act by discriminating against Complainant Karla Johnson on the basis of familial status, it is hereby

ORDERED that,

1. Respondents are permanently enjoined from discriminating against Complainant Karla Johnson and her children, or any member of her family, and from retaliating against or otherwise harassing Complainant or any member of her family. Prohibited actions include, but are not limited to, all those enumerated in the regulations codified at 24 CFR Part 100(1989).

2. Respondents shall inform all their agents and employees of the terms of this Order and shall educate them as to these terms and the requirements of the Fair Housing act.

3. Within 30 days of the date this Initial Decision and Order is issued, the respondents shall pay damages in the amount of $1,000 to Complainant to compensate her for the emotional distress that resulted from Respondents' discriminatory activity.

4. Within 30 days of the date this Initial Decision and Order is issued, the respondents shall pay a civil penalty of $500 to the Secretary, United States Department of Housing and Urban Development.

5. Within 30 days of the date that this Initial Decision and Order is issued, the respondents shall submit a report to HUD's Denver Regional Office of Fair Housing and Equal Opportunity that sets forth the steps they have taken to comply with the other provisions of this Order.

6. Fair Housing Case number HUDALJ 08-92-0239-1 is **DISMISSED** with prejudice.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) of the Fair Housing Act and the regulations codified at 24 CFR 104.910, and will become final upon the expiration of 30 days or the affirmance, in whole or in part, by the secretary within that time.

_____

ROBERT A. ANDRETTA
Administrative Law Judge

Dated: November 21, 1994.

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION AND ORDER issued by ROBERT A. ANDRETTA, Administrative Law Judge, in HUDALJ 08-91-0230-1 and HUDALJ 08-92-0239-1, were sent to the following parties on this 21st day of November 1994, in the manner indicated:

_____
Chief Docket Clerk

REGULAR MAIL:

Karla Johnson
1511 East 10th Street
Pueblo, CO 81001

Steve E. Alcala, Esquire
Kettlekamp & Alcala, P.C.
540 Norwest Bank Building
Pueblo, CO 81003

Marc Rothberg, Esq.
Office of Assistant General Counsel
U. S. Department of Housing
and Urban Development
633 17th Street, 13th Floor
Denver, CO 80202-3607

INTEROFFICE MESSENGER:

Roberta Achtenberg, Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5100
Washington, D.C. 20410

Harry L. Carey, Assistant General Counsel for Fair Housing
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 9238

Washington, D.C. 20410

Jonathan Strong, Assistant General Counsel
for Fair Housing Litigation
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 9238
Washington, D.C. 20410